

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9651

IN THE MATTER OF:

Served June 15, 2006

Application of CITY SIGHTSEEING)	Case No. AP-2006-013
BUSES LLC for a Certificate of)	
Authority -- Irregular Route)	
Operations)	

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is opposed by City Sightseeing Washington DC Inc., WMATC Carrier No. 931.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

An application for a certificate of authority must be in writing, verified, and in the form and with the information that Commission regulations require.¹ Commission Regulation No. 54 requires applicants to complete and file the Commission's application form. The form itself requires supporting exhibits. The evidence thus submitted must establish a prima facie case of fitness and consistency with the public interest.²

Once applicant has made its prima facie case, the burden shifts to protestant to contravene applicant's showing.³ If the protestant is an existing carrier, the burden is on protestant to show that competition from the applicant would adversely affect protestant to such a degree or in such a manner as to be contrary to the public interest.⁴ The protest must be accompanied by all available evidence on which the protestant would rely.⁵

I. APPLICATION

Applicant proposes commencing operations with three double-decker buses. Applicant's proposed tariff contains individual and group sightseeing rates.

¹ Compact, tit. II, art. XI, § 8.

² In re City Sightseeing USA Inc., No. AP-04-39, Order No. 8042 (June 1, 2004).

³ Id.

⁴ Id.

⁵ Commission Regulation No. 54-04(a).

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

We find that applicant has complied with Regulation No. 54 and has established thereby a prima facie case of fitness and consistency with the public interest.⁶

II. PROTEST

Protestant opposes the application on public interest grounds, but has not challenged applicant's fitness.

Protestant argues that the service proposed by applicant is identical to the service offered by protestant and that allowing applicant to operate in the Metropolitan District under the name "City Sightseeing Buses LLC" would unduly confuse the public, given that protestant is already authorized to operate in the Metropolitan District under the name "City Sightseeing Washington DC Inc."

Protestant requests that the Commission deny the application or, in the alternative, require applicant to "alter its name so as to eliminate confusion."

The Commission's mandate includes protecting the public from unfair competition.⁷ The use of a name that is similar to that of a competitor, which has the capacity to confuse or deceive the public, may be prohibited by the Commission as a method of unfair competition.⁸ The appropriate remedy for potential name confusion is ordering an applicant to propose a different name for use in the Metropolitan District, rather than denying an application.⁹

After the protest was lodged, applicant of its own volition amended its legal name to CSL LLC, yielding the alternative relief sought by protestant. Accordingly, the protest is denied.

III. CONCLUSION

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed

⁶ See Order No. 8042 (prima facie case made by complying with Regulation No. 54).

⁷ *In re D C Tours Inc.*, No. AP-02-113, Order No. 7047 (Feb. 25, 2003).

⁸ *Id.*

⁹ *Id.*

transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1240 shall be issued to CSL LLC, 1791 Lanier Place, N.W., #34, Washington, DC 20009.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

4. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, SMITH, AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

